

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS LIABILITY)
LITIGATION)
_____)

MDL No. 2419
Dkt. No 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:)

Suits Naming the Tennessee Clinic)
Defendants)
)

NOTICE OF POSTPONEMENT OF DEPOSITION

Defendants Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John Culclasure, MD; Debra Schamberg, RN, CNOR; Vaughan Allen, MD; Specialty Surgery Center, Crossville, PLLC; Kenneth R. Lister, MD; Kenneth Lister, MD, PC; and Donald E. Jones, MD (collectively "Tennessee Clinic Defendants") give notice to the Court and to all parties of the following:

1. On March 18, 2015, the Tennessee Clinic Defendants served a subpoena on the Massachusetts Board of Registration in Pharmacy ("Mass. BoP"), along with a Rule 30(b)(6) notice of deposition and request for documents. The deposition was set for May 6, 2015.

2. The Mass. BoP, through counsel, lodged various objections to the subpoena and notice.

3. The Tennessee Clinic Defendants participated in lengthy meet-and-confers to clarify the documents and testimony they sought and to explain why it was necessary. The Tennessee Clinic Defendants agreed to postpone the deposition from the May 6, 2015, date, at the request of the Mass. BoP, to allow time for the Mass. BoP to arrange for document production, produce documents, and identify and prepare a witness for the deposition. The agreed-upon aspirational goal from these meet-and-confers was to conduct the deposition on June 15, 2015. On April 27, 2015, the Tennessee Clinic Defendants filed a notice of postponement of the deposition, citing this agreement.¹

4. Since that time, the Mass. BoP has produced no documents in response to the subpoena nor has the Mass. BoP provided a timeline for its production of documents.

5. On June 4, 2015, the Mass. BoP notified the Tennessee Clinic Defendants for the first time that it would not produce a witness for a deposition, citing the *federal* prosecution of the NECC Insiders as grounds. The Tennessee Clinic Defendants responded, taking exception to this new position taken by the Mass. BoP, but has received no response from the Mass. BoP.

6. Given that the Mass. BoP has produced no documents in response to the subpoena nor provided a timeframe for document production, and given the fact that the Mass. BoP now takes the position that it should not have to produce a witness for deposition, the Tennessee Clinic Defendants must indefinitely postpone the deposition of the Mass. BoP to allow the Mass. BoP to file whatever discovery motion it deems necessary.

¹ Dkt. 1792.

7. Thus, to the extent any party in this MDL thought that the deposition would go forward on June 15, 2015, the Tennessee Clinic Defendants hereby give notice that it will not.

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

/s/ Chris J. Tardio

C.J. Gideon, Jr.*

Chris J. Tardio*

Alan S. Bean**

Matthew H. Cline*

315 Deaderick Street, Suite

Nashville, TN 37238

Ph: (615) 254-0400

Fax: (615) 254-0459

chris@gideoncooper.com

***Attorneys for the Tennessee Clinic
Defendants***

* Admitted pursuant to MDL Order No. 1.

** Admitted *pro hac vice*.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 12th day of June, 2015.

This document was also served by electronic mail on:

David Hampton
Ronald Kehoe
Massachusetts Attorney General Office
One Ashburton Place
Boston, MA 02108
david.hampton@state.ma.us
Ronald.kehoe@state.ma.us

*Counsel for Massachusetts Board of Pharmacy
and Massachusetts Department of Public Health*

/s/ Chris J. Tardio
Chris J. Tardio